BORA LASKIN LAW LIBRARY
3 1761 06095145 6

PROPERTY
VOLUME I

COURSE MATERIALS
2005-2006

Professor Arnold Weinrib

Faculty of Law
University of Toronto

***These Materials are for the sole use of students at the Faculty of Law, University of Toronto**

Storage

KE
618
.A7W44
2005
v.1
c.1

BORA LASKIN LAW LIBRARY
SEP - 1 2005
FACULTY OF LAW
UNIVERSITY OF TORONTO

VOLUME ONE

I. WHAT IS PROPERTY?

A. Unfair Competition and Protection of Intangibles

i) Common Law

MacPherson, "The Meaning of Property" 1-1

International News Service v. Associated Press 1-7

Metropolitan Opera Ass'n v. Wagner Nicols 1-18

Victoria Park Racing v. Taylor 1-25

Notes 1-33

Institut National des Applellations d'Origine des Vins v. Andres Wines 1-35

Notes 1-54

ii) Criminal Law

R v. MacEwen, R v. Bell 1-56

R v. Stewart 1-59

B. The Taking of Property

Pennsylvania Coal Co. v. Mahon 1-70

Note: Keystone Bituminous Coal Co. v. Mahon 1-74

Belfast Corp. v. O.D. Cars Ltd. 1-75

Manitoba Fisheries Ltd. v. R 1-79

A & L Investments Ltd. v. Ontario 1-93

Note 1-99

D. Property and Competing Rights

London Borough of Southwark v. Williams 1-100

Harrison v. Carswell 1-103

Note 1-112

II. ADVERSE POSSESSION

Callahan: Adverse Possession 2-1

Limitations Act 2-11

Re St. Clair Beach Estates Ltd. and MacDonald 2-13

Re Lundigrans Ltd. and Prosper et al. 2-19

Wallis's Cayton Bay Holiday Camp v Shell-Mex 2-21

Note: Buckinghamshire County Council v. Moran 2-33

Masidon Investments v. Ham 2-35

Beaudoin v. Aubin 2-45

Note 2-52

III. LAND: THE ESTATE SYSTEM

A. Fee Simple Estates

R. Scane, History of the Estate System 3-1

Laskin, Cases and Notes on Land Law 3-7

Conveyancing and the Law of Property Act 3-8

i) Defeasible Fees

Eastern Trust Co. v. McTague 3-9

ii) Defeasible Fees and Public Policy

Re Drummond Wren 3-17

Re Noble and Wolf 3-21

Conveyancing and Law of Property Act 3-30

Canadian Charter of Rights and Freedoms,

1982, ss. 15, 32 3-31

Blathwayt v. Baron Crawley 3-32

Canada Trust Co. v. Ontario Human Rights 3-37

iii) Defeasible Fees and Uncertainty

Sifton v. Sifton 3-52

Clayton v. Ramsden 3-62

Re Noble and Wolf 3-68

Re Hursham 3-71

Blathwayt v. Baron Crawley 3-73

iv) Defeasible Fees and Restraints on Alienation

Laurin v. Iron Ore Co. of Canada 3-75

Stevens v. Gulf Oil Canada Ltd. 3-84

B. Fee Tail Estate

R. Scane, The Estate in Fee Tail 3-90

C. Life Estates

R. Scane, Life Estates 3-93

R. Scane, Competition Between Interests 3-97

VOLUME TWO

IV. EASEMENTS

A. Essential Requirements

In Re Ellenborough park 4-1

Temma Realty v. Ress Enterprises 4-11

Phipps v. Pears 4-20

Note 4-22

B. Creation of Easements

i) By Implied Reservation

Sandom v. Webb 4-23

Barton v. Raine 4-31

ii) By Necessity or Implied Grant

Wong v. Beaumont Property Trust Ltd. 4-37

B.O.J. Properties Ltd. v. Allen's... 4-42

Nickerson v. Barraclough 4-47

Conveyancing and Law of Property Act 4-52

iii) By Prescription

Limitations Act 4-53

Garfinkel v. Kleinberg 4-54

Rose v. Krieser 4-58

C. Scope of Easements

Malden Farms Ltd. v. Nicholson 4-69

Peacock v. Custins 4-74

V. RESTRICTIVE COVENANTS

A. Positive Covenants

Austerberry v. Oldham 5-1

Durham Condominium Corp. v. Amberwood 5-7

B. Negative Covenants

Tulk v. Moxhay 5-52

London County Council v. Allen 5-54

Note 5-63

Ontario Heritage Act R.S.O. 1990, c. O-18 5-64

Noble and Wolf v. Alley 5-65

Rogers v. Hosegood 5-69

Re Sekretov and City of Toronto 5-72

Note 5-75

Re Lakhani et al. and Weinstein 5-76

VI. LANDLORD AND TENANT

A. The Relationship and its Consequences

i) Tenants and Licensees

Re B.A. Oil and Halpert 6-1

Shell-Mex and B.P. Ltd. v. Manchester Garages Ltd. 6-10

Street v. Mountford 6-13

ii) Consequences of the Leasehold Relationship

Stewart v. Child's Co. 6-18

Goldhar v. Universal Sections and Mouldings Ltd. 6-19

Highway Properties Ltd. v. Kelly, Douglas and Co. 6-31

North Bay T.V. and Audio Ltd. v. Nova Electronics 6-40

B. Landlord's Obligations

i) Quiet Enjoyment

Owen v. Gadd 6-45

Kenny v. Preen 6-50

Note 6-54

ii) Non-Derogation from Grant

Harmer v. Jumil (Nigeria) Tin Areas Ltd. 6-56

Caplan v. Acadian Machinery Ltd. 6-59

Port v. Griffith 6-60

Note 6-64

iii) Fitness For Use

Smith v. Marrable 6-65

Sutton v. Temple 6-67

Hart v. Windsor 6-68

Bryner v. Thompson 6-71

Note 6-72

Barrett v. Lounova (1984) Ltd. 6-73

Johnson v. Givens 6-79

iv) Statutory Duty to Repair

Pajelle Investments Ltd. v. Herbold 6-84

Note 6-91

McQuestion v. Schneider 6-92

Note 6-94

C. Tenant's Obligations

i) Payment of Rent and Defences from Rent Actions

(a) Surrender and Abandonment

Note 6-95

Windmill Place v. APECO of Canada Ltd. 6-96

Toronto Housing Co. Ltd. v. Postal Promotions Ltd. (Ont. H.C.) 6-100

Toronto Housing Co. Ltd. v. Postal Promotions Ltd. (Ont. C.A.) 6-105

(b) Frustration

Waddams, "The Law of Contracts" 6-107

Note 6-108

(c) Illegality

Note 6-109

ii) Restrictions on User and Duty to Repair

McQuaig v. Lalonde 6-110

Note 6-114

Norbury Sudbury Ltd. v. Noront Steel (1981) Ltd. 6-115

iii) Relief from Forfeiture

Re Jeans West Unisex Ltd. and Hung 6-128

Note 6-132

D. Transfer by the Tenant

i) Consequences of Transfer

Francini v. Canuck Properties Ltd. 6-134

ii) Need for Landlord's Leave

Wakefield v. Cottingham 6-137

Lifshitz v. Forest Square Apts. Ltd. 6-145

iii) Reasonableness of Landlord's Refusal

Houlder Bros. and Co. v. Gibbs 6-149

Note 6-159

Re Griff and Somerset Management Services Ltd. 6-161

E. Tenant Protection Act

Tenant Protection Act, 1997 6-164

VII. ABORIGINAL RIGHTS

Reproduced from Phillips Casebook

A. Introduction

Notes 7-1

B. Aboriginal Title and Rights at Common Law: Pre-Section 35 Cases

Calder v Attorney-General of British Columbia 7-2

Aboriginal Title after Calder 7-9

Guerin v. The Queen 7-11

C. Aboriginal Rights & the Constitution: Section 35, Extinguishment & Regulation

Notes 7-12

D. Aboriginal Title and the Constitution

Delgamuukw v British Columbia 7-13

E. Aboriginal Rights and Common Law Property Principles

St. Mary's Indian Band v. Cranbrook 7-30